JUDICIAL AFFAIRS:
HISTORY, MORAL DEVELOPMENT, AND THE CRITICAL ROLE OF STUDENTS

by

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Abstract

Judicial affairs play an integral role in the functioning of an institution and in the moral development of students. Thus, it is critical to have an understanding of the structures that are utilized, how to choose the most effective structure for one's specific institution, and how to successfully bring about the moral and ethical development of students. The purpose of this report is to examine the judicial structures that are in place at institutions of higher education and their impact on students. Topics discussed include the history of discipline and current judicial structures that are commonly utilized (e.g., legalistic, collaborative, honor codes, and restorative justice), how they function, and if an ideal judicial structure exists. In addition, the report addresses the theoretical foundations of moral and ethical development through the work of Gilligan (1982), Kohlberg (1964), Perry (1981), and Piaget (1965), and provides perspectives and insight on the judicial process from both judicial and student affairs administrators as well as students who have experienced the process.

The findings presented in the report include the transition from judicial systems run by administrators to those run primarily by students, and the importance of understanding theories of student moral development despite the process that is chosen. Also noted are the significant impact of a student's moral development on their perceptions of the process and on their resultant behaviors, and the role the campus environment plays in regards to behavior and discipline. Additionally, the findings convey the importance of employing judicial structures that are effective for the student population at the institution, and not subscribing to a one-size-fits-all model. Finally, the crucial role of evaluation and continual improvement in creating an effective structure, and the implications for future practice that come from this are discussed.

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Introduction

Student discipline and judicial affairs have been a necessity since the beginnings of higher education. From the times of donor and trustee-run colleges to *in loco parentis* and the critical role of faculty to the student-run judicial processes more common today, the judicial structures employed to handle student conduct have certainly evolved. As Thomas Jefferson experienced at the University of Virginia in the early 1800s, while he "at first was in favor of self-government for the students and a minimum of discipline, a student riot…convinced him that severer regulations were essential" (Brodie, 1974, p. 204). A structure to regulate student conduct would need to be established and presented to students to set forth institutional expectations of behavior. "Jefferson learned one lesson that all college and university administrators know: We cannot hope that all students will behave themselves simply because they are adults" (Stoner & Lowery, 1994, p. 3). Lake (2009) discussed how discipline problems stem from an institution's inability to anticipate challenges students will face, coupled with students who fail to see the value of a college education and who lose focus of the reasons that motivated them to attend. The student support provided by university judicial systems and their effectiveness in addressing problems play an integral role in student success. The clear need for discipline leads researchers, administrators, and student affairs professionals to investigate the most effective methods and the benefits to student moral development.

This report will examine the history and beginnings of student discipline and judicial affairs from the early 1700s until today, highlighting the transition from strictly legal systems to more developmental and educational structures. It will also address judicial structures that are currently utilized, including legalistic models, honor codes, restorative justice models, and collaborative structures between administration, faculty, and students. The focus will then shift

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to student development and the theoretical foundations that serve as a basis for the judicial systems employed by many institutions. The discussion will include the moral development of students as discussed by Gilligan (1982), Kohlberg (1964), Perry (1981), and Piaget (1965); the role student moral development plays in students' involvement in disciplinary matters; and the educational aspect and fairness of discipline, especially as perceived by students. The report will conclude with implications from the literature, gaps that exist in current literature and areas for future research and study, and recommendations for practice for judicial affairs.   As institutions continue to strive for the holistic development of students, student discipline and judicial affairs play a key role in encouraging students to be critical thinkers, knowledgeable decision-makers, and impactful citizens.

History and Development of University Judicial Structures

Since the establishment of colonial colleges, institutions have had the authority to administer sanctions regarding academic and extracurricular activities and behavior (Fitch & Murry, 2001). The structure and function of these sanctions has changed and evolved from the 1600s to today. The beginning of higher education was dictated by those with whom power resided, namely donors, well-known community members, and college presidents. Thelin (2004) and Brubacher and Rudy (1997) discussed how the desire for the success of universities meant that many college presidents and higher education administrators were at the will of donors and well-known men in society as they were the financial supporters of institutions. Thus, college presidents and selected administrators, with the assistance of tutors, were the disciplinarians of the higher education system, and they needed to maintain the name and prestige of the institution in their decision-making. This disciplinary structure, which was authoritarian and paternalistic in

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nature, was bolstered by the religious concepts on which the colonies were founded, and sought to protect young men from moral dangers (Brubacher & Rudy, 1997).

The first traces of judicial structures in the early 1700s were needed to deal with "consumer complaints" (Thelin, 2004, p. 21), or issues that students had with some part of the institution. In terms of the first sanctions imposed, Harris, Fields, and Contreras (1982) addressed how corporal punishment was utilized in early colonial institutions, as "the religious nature of colonial education lent itself well to this practice of the disciplining of the flesh due to the prevailing assumption that people were, by nature, corruptible and in need of being reformed" (p. 16). Corporal punishment was more commonly seen in secondary schools, but with young, adolescent men entering the college setting, it was viewed as acceptable at some institutions. The impetuous use of corporal punishment resulted in a "hardening experience for the student to the extent that the road to expulsion and the ultimate denial of educational opportunities [began] to be laid brick by faithful brick" (Harris et al., p. 15). The results of the use of corporal punishment were a lack of behavior modification, a lack of an educational foundation for this type of discipline (seen more as dehumanizing), and a hostility that developed between students and administrators (Harris et al., 1982).

The physicality of discipline using corporal punishment began to diminish and college presidents and administrators sought new ways to try and curb negative student behavior. Sanctions imposed now ranged from "rustication," where students were forced to move their belongings to the country and away from the institution for a stated period of time, to "degradation," an academic penalty where a student's rank in class was lowered (Thelin, 2004). These punishments were still rather severe in the eyes of students, a shift from lighter punishments of the medieval universities where a student might bring wine for the class as

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reparation (Thelin, 2004). As the 1770s approached, student conduct shifted as students moved further from boyish mischief to savvy critiques of curriculum, elders of the university, and institutional loyalty to the crown in England. Student riots and rebellions in the late 1700s and well into the 1800s plagued campuses like Yale, Princeton, Harvard, and the University of Virginia (Brubacher & Rudy, 1997). This shift in conduct gave way to new judicial structures and methods of implementation, though the religious influence that guided the decision-making of the first colonial institutions continued. Through the shift of power and responsibility, disciplinarians still maintained the goal was a controlled environment that produced morally and religiously upstanding students (Brubacher & Rudy, 1997).

As higher education moved into the 1800s, more colonial institutions began to emerge and donor influence began to see a decline. Power shifted into the hands of institutional administrators, governing bodies, and faculty. This meant that faculty began to take control of some of the internal functions of the institution, including student discipline. This is also the time when the idea of *in loco parentis*, faculty and staff who served "in lieu of parents" while students attended an institution, really took hold (Brubacher & Rudy, 1997; Stoner & Cerminara, 1990). Strict rules were developed to curb behaviors. Brubacher and Rudy (1997) stated, "Every possible aspect of student life was regulated—promptness, attendance at classes and prayers, dressing, idling, fishing, gunning, dancing, drinking, gambling, fighting, gaming, swearing, and so on ad infinitum" (p. 51).

According to Harris et al. (1982), faculty being given the power to discipline students was an attempt to keep them busy and "to treat a disruptive student as a surface blemish to be removed from the student body" (pp. 15-16). Many faculty meetings were filled with disciplinary cases, and faculty would spend portions of their days on the look-out for offenders

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(Brubacher & Rudy, 1997). The discipline of students was now at the discretion of faculty, and at the time, "the law provided no redress for what would today be viewed as obvious wrongs committed by administrators and faculty members on students" (Lake, 2009, p. 1). Harris et al. (1982) addressed how sanctions of the early 19th century had faculty and administrators utilizing fines and verbal corrections as means to remedy student behaviors via humiliation and harshness while eliminating the physical nature of past sanctions. Sanctioning students to suspensions and expulsions sought to eliminate unwanted behaviors from the community (Brubacher & Rudy, 1997). On the whole, students had been conditioned to accept any sanctions and punishments that were imposed and sought to avoid punishment rather than to fight it (Harris et al., 1982).

In the mid to late 1800s, a call for student self-discipline and self-governance was on the collegiate horizon. There was an emphasis on utilitarianism and a spirit of democracy on many campuses that made the authoritative and paternalistic ways seems like things of the past (Brubacher & Rudy, 1997). Theorist John Dewey sought to view discipline as developmental and as an educational versus an administrative problem. He recommended that students be directed toward self-discipline and self-control as opposed to discipline that is imposed from the outside or viewed with an external locus of control (Harris et al., 1982). Additionally, Harris et al. (1982) noted an important point related to the self-discipline of students:

> The main question here is power. Students who have no power to affect their own decisions can never experience self-discipline. Yet, to surrender power completely, without leaving a structure upon which to build, is only inviting chaos. What is needed are new structures…that encourage student self-discipline through cooperation. (p. 17)

Jefferson was certainly in support of the foundations and educational value of structured student self-discipline and self-governance. "As early as 1825, Jefferson had sought to set up a

form of student self-governance at the University of Virginia" (Brubacher & Rudy, 1997, p. 124), but it was quickly abandoned after a brief trial. Following the short-lived structure at the University of Virginia, "honor systems," as a form of self-governance, began at various institutions (Brubacher & Rudy, 1997). These were the first attempts to place power into the hands of students, and their success, unlike that of Jefferson at the University of Virginia, was not short-lived.

Brubacher and Rudy (1997) discussed how post-Civil War (in the mid to late 1800s) there were fewer rebellions as institutions did away with their rigorous systems of discipline and began to treat their students as young adults. Change was also facilitated by curriculum alterations which affected the educational environment and attitudes on campus, as well as a rise in fraternities and intercollegiate sports which were an outlet for the energy of young college men. Special police forces were being hired, and there was a dissipating expectation of faculty and tutors to serve in this role. The post-Civil War era was also witness to the formation of student committees to maintain order in dormitories at institutions such as Vanderbilt, Pennsylvania, and Chicago, while Princeton, Virginia, Wesleyan, and Bates utilized student advisers who consulted with faculty on various matters and issues that arose (Brubacher & Rudy, 1997). Many institutions, including women's colleges, were beginning to follow suit and attempted to establish some form of student government. The delegation of disciplinary control to bodies of students was modeled after the organization of the federal government in many cases, and for the University of Illinois, Iowa State College, and the University of Wisconsin, this structure fell to the evils of cliques, inadequate enforcement, lack of cooperation from the administration, and unreliable and impulsive decision-making. However, in 1873 the University of Maine saw greater success with their student government, and in 1883 President Julius Seelye

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of Amherst was able to institute a successful structure where "a student senate was given supervision of discipline in place of the faculty. President Seelye retained veto power over its deliberations, but was obliged to utilize it only once in eight years" (Brubacher & Rudy, 1997, p. 125). The extent of student control varied by institution, as some institutions permitted students to determine policy while others simply permitted students uphold and enforce it. In either case, the power of control was shifting to students and the developmental undertones of Jefferson and Dewey were taking hold (Brubacher & Rudy, 1997).

The early and mid 1900s were full of more student-driven discipline systems with the occasional administrator, faculty, or staff assisting, but when the 1960s approached, the tone changed to one much more focused on the legality of student discipline. Before the 1960s, the law played a minimal role in regulating higher education, but a case involving six black students who participated in a civil-rights demonstrations and were expelled significantly impacted the landscape (Lake, 2009; Lipka, 2009a). In the case of *Dixon v. Alabama State Board of Education* (1961), the Alabama State College students were expelled and denied a hearing as part of the expulsion process (Gehring, 2001; Harris et al., 1982; Lake, 2009; Lipka, 2009a). The U.S. District Court for the Middle District of Alabama found that it was not necessary for the institution to provide an opportunity for a hearing, but the Fifth Circuit Court of Appeals disagreed with this decision. The court stated that under the Constitution, the students were entitled to "...notice and some opportunity for hearing before...[being] expelled for misconduct" (*Dixon v. Alabama State Board of Education*, 1961, p. 158). In addition, the court stated the following regarding due process to students:

> For the guidance of the parties in the event of further proceedings, we state our views on
> the nature of the notice and hearing required by due process prior to expulsion from a

state college or university...The notice should contain a statement of the specific charges and grounds which, if proven, would justify expulsion under the regulations...a hearing which gives the Board or the administrative authorities of the college an opportunity to hear both sides in considerable detail. ...the student should be given the names of the witnesses against him and an oral or written report on the facts to which each witness testifies. He should be given an opportunity to present to the Board or the administrative official of the college his own defense against the charges and to produce either oral testimony or written affidavits in his behalf. (*Dixon v. Alabama State Board of Education*, 1961, p. 159)

It is also important to note that while due process rights are guaranteed to students, the court also made clear that "This does not imply that a full-dress judicial hearing with the right to cross-examine witnesses is required" (*Dixon v. Alabama State Board of Education*, 1961, p. 159), nor does it include the right to be represented by counsel nor to appeal (Gehring, 2001). While Constitutional guarantees of due process rights were originally only applicable to trial by jury, following the case of *Dixon v. Alabama State Board of Education*, these guarantees were to "include individuals affected by the decisions of administrative agencies, such as public [institutions], where the possible loss of a fundamental right was present" (Harris et al., 1982, p. 33). In the case of *Goss v. Lopez* (1975) that followed Dixon, the Supreme Court also required that in regards to a sanction, a student "...be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story" (p. 581). As discipline moved in a more legal-minded direction, the relationship that formed between students and institutions was viewed in the eyes of the courts as contractual (Stoner & Cerminara, 1990).

The Dixon case was considered a "landmark case" in the area of student discipline, and was cited in the case of *Goss v. Lopez* (1975) and many cases since (Gehring, 2001). One lesson administrators learned from these cases was that the application of due process law can certainly be circumstantial, but it was important for institutions to guard against the arbitrary application of this rule, for this treatment of students could easily harm the educational environment that was trying to be created (Harris et al., 1982; Lipka, 2009a). The court cases surrounding student discipline also resulted in the common use of the authoritative label "judicial" (Lipka, 2009a). Donald D. Gehring, a professor emeritus of higher education at Bowling Green State University and founder of the Student-Conduct Association, commented on how the disciplinary process immediately became procedural because "We were afraid we would do something wrong and get sued over it" (Lipka, 2009a, p. 2). Though private institutions were not subject to the same standard of due process as public institutions, many of them moved in that direction regardless (Lipka, 2009a). Dannells (1997) referred to the forcefulness of the law in regards to student discipline as "creeping legalism" (p. 69), and this legal focus of student discipline lent itself to the use of formal investigations and legal terminology, whether beneficial for students or not (Gehring, 2001; Lipka, 2009a).

Disciplinarians, both faculty and staff as well as students, began to implement more formal investigations, which were viewed as an educational opportunity to help students look objectively at a case and to fully understand their actions and consequences (especially in cases of more serious conduct such as sexual misconduct), as well as to ask questions before punishing (Lipka, 2009a). Many felt it necessary to be "experts on the nuances of these cases" (Morris, as cited in Lipka, 2009a, p. 5) to avoid making rash decisions and to avoid facing legal action. With formalized proceedings for student conduct also came legal language, which brought with

it the necessity to differentiate campus discipline from criminal proceedings, the desire for lawyers, and adversarial discipline environments (Gehring, 2001; Lake, 2009). Gehring (2001) addressed how there are many elements of a legal proceeding that are very different from campus judicial systems. For example, in a court there is a need for specific elements to be proven beyond a reasonable doubt whereas a violation of a conduct code may only require that it be shown the person more likely than not engaged in the prohibited behavior. Gehring's (2001) thoughts are in support of the court that stated they "...do not believe there is a good analogy between student discipline and criminal procedure" (*Norton v. Discipline Committee, East Tennessee St. University,* 1969, p. 200), and that such an analogy is simply not valid (General Order on Judicial Standards of Procedure and Substance, 1968). Gehring (2001), Pavela (1999), and Stoner and Cerminara (1990) discussed how distinguishing criminal proceedings from campus discipline also means rethinking the legal language that was being used as it can cause confusion and misunderstanding on the part of students, attorneys, and others. Creating a legal atmosphere in campus judicial settings can lead to students' desire for lawyers to be present and naturally contributes to an adversarial environment where winners and losers exist (Gehring, 2001). The case of *Hardison v. Florida A&M University* (1998) demonstrates that when legal language is kept within the judicial structure, courts can uphold institutions to a standard of proving the elements of the crime and uphold them to the same legal standards applicable to the court system (Gehring, 2001; Lake, 2009). In essence, formal language and procedures can truly bar the "opportunity for developmental efforts" (Dannells, 1997, p. 79), "...create an adversarial atmosphere likely to produce harsher, not more lenient results" (Pavela, 1999, p. 906), and fail to provide the support necessary for personal and social development (Gehring, 2001).

The importance of due process to students and following legal guidelines in discipline certainly was established in the Dixon case, but extending the legal structure and language to less severe conduct situations is not always necessary, according to the courts and some researchers. Gehring (2001) noted that in working with lesser disciplinary sanctions (aside from suspension and expulsion), the Supreme Court ruled that students are entitled to "some kind of notice and ...some kind of hearing" (*Goss v. Lopez,* 1975, p. 579), which could take the form of an "...informal give-and-take between student and disciplinarian..." (*Goss v. Lopez,* 1975, p. 584). There is not always a need for a formal judicial hearing or a "right" to appeal, but discipline can be just as effective and fall within the guidelines of the law (in terms of providing due process) in a non-adversarial environment (Harris et al., 1982; Pavela, 2000). In addition to due process rights guaranteed in the Dixon case, a "Joint Statement on Rights and Freedoms of Students" was drafted by professionals in higher education associations that encourages disciplinarians to clearly define the conduct issue at hand, to investigate student conduct, to report the status of actions being taken, and to ensure a hearing and procedures (Harris et al., 1982).

Since the 1990s more courts have been upholding the disciplinary decisions of institutions as long as they conformed to policies and seemed fair. This facilitated a shift in the conduct process to administrators insisting on "collecting not evidence, but information; finding students not guilty, but responsible; imposing not sentences, but sanctions" (Lipka, 2009a, p. 3). Yet, one can still see the legacy of the 1960s and 1970s and the judicial scrutiny that accompanied these decades playing out in conduct codes that are procedurally driven and legalistic in nature, while lacking educational objectives and real guidance (Dannells, 1997; Lake, 2009). According to White (2006), there are three important lessons to take away from the cases like Dixon and Goss. There is a need to document decisions in order to be equipped to

explain and support judgments should they be challenged, especially in a court of law. It is also

critical to adhere to institutional policies, making sure disciplinarians are consistent with

enforcement. Finally, institutions should take statutory and regulatory compliance seriously, such

as ensuring due process when necessary. The tone of the court system when it comes to

students' rights is that institutions need to follow proper procedures, but there is still a great deal

of room for each institution to implement processes as it sees fit (Lake, 2009).

Common Judicial Structures

The freedom that institutions are permitted when it comes to their judicial processes

allows for many different structures and procedures to exist, such as legalistic, collaborative,

honor codes, and restorative justice, with none necessarily better than another. These structures

strive to provide an educational experience for students and an opportunity for students' moral

development (Dannells, 1990; Mullane, 1999). As part of the educational experience, it is

advantageous for institutions to formulate and communicate the purpose and goals of their

judicial system, and to help administrators, faculty, and staff understand that they play many

roles in the process including educator, advocate, defender, and advisor (Pavela, 1996; Shea,

1994). Mullane (1999) and Pavela (1996) also agreed that judicial systems should seek to

develop students who understand their personal and civic responsibility, and who are able to

demonstrate positive behaviors in the future. With development in mind, the goals and mission

of both the institution and its judicial system will typically dictate the structure chosen to be

employed.

Legalistic Judicial Structure

The court cases of the 1960s and 1970s facilitated the creation and common use of the legalistic or formal judicial structure. Despite the flexibility that institutions have been allowed in regards to implementation of constitutional mandates (e.g., due process), colleges continue to utilize legalistic discipline models (Lake, 2009). As Lipka (2009a) discussed, though judicial processes have changed, many campus conduct systems have retained fixtures of the judicial process to be both legalistic and fair to students, and the use of lawyers for guidance post-Dixon has perpetuated the legalistic language and mindset at many institutions (Lake, 2009). The legalistic model that is used is an attempt to give students "their day in court" (Shea, 1994, p. 3), and whether cases are heard by fellow students or by administrators, the goal is still to provide an educational setting which gives rise to behavioral changes.

The purpose of implementing a legalistic model for many institutions is the desire to work with a procedure that effectively investigates and finds facts in a given situation, and one that facilitates the raising of ethical questions (Gehring, 2001; Lipka, 2009a; Pavela, 1985). Harris et al. (1982) also noted how court cases have made it clear "that disciplinarians, although proceeding in utmost good faith, frequently find themselves acting on the reports and advice of others when the controlling facts and nature of the conduct are often disputed" (*Goss v. Lopez,* 1975, p. 36). The formal procedures and fact finding that accompany a legalistic model can help disciplinarians avoid acting on premonitions or reports or advice from others, and help them make informed decisions that have a greater likelihood of holding up in a court of law. As institutional confidence that the court system does not expect them to conform to the rules of criminal proceedings grows, some colleges are beginning to make disciplinary hearings less like trials and to find alternative techniques to handle conduct while still maintaining the legalistic

foundation (Lipka, 2009a). In terms of the application of the legalistic structure, Shea (1994)

discussed how the University of Georgia utilized a student advocate and student defender who

argued cases in front of student justices (or in front of an administrator if chosen). Students who

participate in the university's court systems go through an 8-week training on regulations and

procedures. In this structure, it was found that students tend to be harsher defenders of the law

than administrators (*U. of Georgia Paper Examines Campus Judicial System*, 1994). Gehring

(2001) also suggested that administrators take part in the student panel that hears a case because,

while there are educational benefits to a peer panel, the maturity and wisdom from administrators

can maximize the impact on a student in such a critical "teachable moment."   Shea (1994) also

presented a less "court-like" application of the legalistic model utilized at the University of

Pennsylvania, where the institution is seeking to apply legal techniques outside of the adversarial

court setting to resolve conflicts through methods of alternative dispute resolution such as

arbitration. In many cases, a one-on-one dialogue between the student and administrator with

legalistic language allows for all sides to be heard in detail, an assessment of developmental

level(s) to be completed, questions that require reflection from the student to be asked, and a

decision of responsibility to be made (Gehring, 2001). Despite how the legalistic model is

applied, it tends to give institutions and professionals comfort in knowing that their procedures

were similar to a real court of law and would be upheld should they be presented in court.

   While the legalistic model is widely utilized even today, a shift away from this structure

has become more evident in recent years. Lipka (2009a) discussed the findings of a national

study on student conduct policies by Lowery and Dannells (2009). She stated:

   In 2007-8, only 19 percent of institutions allowed students a public hearing, a drop from

   30 percent in 1987-88 and 40 percent in 1977-78. About half (53 percent) let students

confront and cross-examine opposing witnesses, down from 61 percent in 1987-88. Still, students charged with misconduct can present witnesses at most institutions -93 percent - and a defense at even more. Those figures rose slightly in the last 20 years, according to the longitudinal study of 200 baccalaureate-degree-granting institutions. (p. 3)

The Association for Student Judicial Affairs has also changed its name to the Association for Student Conduct Administration to remove the legal implications and court-like atmosphere and expectations that come from the "j word" (judicial) (Lipka, 2009a). Lake (2009) discussed how the move away from the legalistic model may be advantageous when working with the Millennial generation (born in 1982 or later) of students now seen on college campuses as a result of some distinct characteristics. Lake (2009) noted that Millennials are accustomed to rewards for successes and mistakes being overlooked, thus complex judicial systems are foreign. Millennials may also struggle to understand rules as guides for behavior and struggle to turn abstract, objective ideas into action to change. Millennials tend to respond to rules with avoidance behavior, and will find ways around them. Additionally, Millennials often make decisions in connection with friends and family, so the expectation to individually make adult decisions is daunting. Finally, Millennials are motivated to change behavior when such change is associated with a reward. Adapting a judicial system to the student population is an important piece in the educational value of the experience, and courts have stated that the discipline of students is and should be a teaching process (*General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax-Supported Institutions of Higher Education,* 1968). Gehring (2001) and Travelstead (1987) discussed how institutions too often negate the educational climate and attend to the legal to the exclusion of the learning, and the goal should be to utilize processes that are educational and easy for students to navigate (Lipka,

2009a). According to Lake (2009), this emphasis on education and development may mean leaving legalisms and codes behind and seeking to help students help themselves when in college and long after.

Campus-wide Collaborative Judicial Structure

McCabe and Trevino (1993) believed that students will begin to learn what is right and wrong in the eyes of the university if the university and its faculty and staff are engaging in support of conduct codes and promoting appropriate behavior in the student body. In addition, not only do students need to understand that faculty and staff members take misconduct seriously, but that the entire judicial process needs to be a collaborative effort between faculty, administrative and student affairs staff, and students for it to make the greatest impact (Dannells, 1997; Mullane, 1999). Stoner and Lowery (1994) and Hoekema (1994) discussed a shared responsibility for student discipline that exists across an institution, and the need for methods of communicating this responsibility to the institution and to the student. Dannells (1997) noted that since the times of *in loco parentis* when discipline was central to the college mission, faculty are only marginally involved with the daily matters of discipline, and many campus administrators are ambivalent about their duty in regards to student conduct. He suggested that "student affairs leaders, and in particular the chief student affairs officer on campus, must actively and positively embrace their responsibility to encourage the building of moral/ethical communities on campus" (p. 8). Dannells (1997) went on to note that student discipline programs that seek to create environments of care and compassion and deter hateful and destructive behaviors via a commitment to the community can sometimes be the most effective. This community is created when campus leaders, both academic officers and student affairs

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professionals, work collaboratively to develop discipline structures which are fair and humane, and uphold the values of the greater institution for the betterment of each individual student (Dannells, 1997). Carter and Jackson (1982) felt that educators across the institution play a critical role as models to students, especially in terms of their actions and self-control, and they need to understand "that maturity comes through a process that requires time, direction, and great deal of patience" (p. 51).   Part of the effort on the side of the judicial affairs administrators related to appropriate modeling is the ability to candidly admit their own errors and evaluate their work to better provide services and to guide student conduct (Pavela, 1996). Wayson (1982) echoes this idea of faculty, staff, and administrators as models for expected student behavior, and also feels that a critical piece in a campus-wide collaborative judicial structure is including students in the process of creating rules and enforcing them. As part of the collaborative process, the dialogue that must permeate the institution is not one similar to a lecture about the rule that must be followed, but is an open conversation about chosen behaviors and positive changes for the future.

Honor Codes

Honor codes are another form of judicial structure that addresses student discipline, but they focus more on student responsibility and peer influence than on strict rules and proceedings. The first honor codes implemented were at the University of Virginia and West Point in the 1870s, and by 1915 there were over 100 universities employing some variant of the honor system (Brubacher & Rudy, 1997). Lake (2009) argued that honor codes are loved by Baby Boomers but not as effective or as valued with Millennials; yet, this structure is still employed across the country. Hoekema (1994) and Collison (1990) noted that honor codes are commonly found at

smaller, liberal arts institutions, and in the mid 1980s were on the rise at such institutions (Tabor, 1987). With enforcement and revisions typically completed by students, they are effective "…because they appeal to students' desire to live up to a higher standard than that expected of them in ordinary contexts" (Hoekema, 1994, p. 79). They tend to appeal to a student's choice of right action over a forced action sometimes presented in strictly stated, legalistic guidelines for conduct. Hoekema (1994) noted that they occupy "a prominent and essential position on the middle ground, between administrative details and intangible notions of personal responsibility" (p. 73), and are most effective when students are continually made aware of them and when they permeate the institutional environment (McCabe& Trevino, 1993). Honor codes also function in conjunction with the support of informal norms of positive behaviors, because formal processes and sanctioning are not always enough to make sure inappropriate behavior is deterred or not repeated (Caboni, Braxton, Madson, McClendon, & Mundy, 2005). This can likely result in what Dannells (1997) would consider an ideal discipline environment, where there is a campus environment of caring and compassion, and one that deters hateful and destructive behavior by virtue of commitment to the community.

The effectiveness and success of honor codes rely heavily on the impact that peer groups have on chosen behaviors (Kuh & Witt, 1998; Newcomb, 1966). In many cases, students will act in accordance with peer expectations versus strict codes of conduct. Caboni et al. (2005) encouraged disciplinarians and policymakers to give attention to the informal sanctioning that takes place on campus within peer groups, and to note the severity of different behaviors in the eyes of students. This can aid one's understanding of how students view different conduct issues in which they may be involved. Additionally, students who may enter college without clear perceptions of inappropriate behaviors will espouse the behaviors of those around them. Thus,

an honor code that is prevalent and practiced amongst students, and one which supports the administrative policies in place, can have a wide-reaching impact (Caboni et al., 2005). The application and utilization of honor codes takes different forms based on the needs of the campus. McCabe and Trevino (1993) discussed honor codes as a way for institutions to clearly define "wrongdoing," and to virtually eliminate students' ability to rationalize and to justify negative behaviors. Honor codes also serve to shift control from administrators and faculty to students, though the administration of honor codes varies from faculty to students to administrators to a combination of the three. Brubacher and Rudy (1997) and McCabe and Trevino (1993) discussed how honor codes are utilized in allowing students to take examinations without the presence of faculty and in encouraging students' honor when preparing assignments. Honor codes are also utilized to promote positive student conduct and to foster an environment where students hold one another accountable. McCabe and Trevino (1993) presented evidence that honor codes are especially effective in dealing with issues of academic dishonesty. Some institutions allow students privileges like unproctored exams, and students' drive to maintain the privileges will motivate them to uphold the honor code. Schools such as Princeton, Smith, Bryn Mawr, and Rice expect that if a student observes an honor code violation, the student reports the incident, though since colonial times institutions have struggled with students who do not want to "inform" on fellow students (Berger, 1988; Brubacher & Rudy, 1997). Astin (1995) even suggested some type of "citizenship curriculum" to be integrated into the learning environment that will support campus discipline and will discuss students' rights and responsibilities as part of a campus community. Despite how the honor codes are instituted, Dannells (1997) noted that research supports the efficacy of such codes and that the very process of considering an honor

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code will bring about value-focused discussions that are critical to the foundation of institutions of higher education.

Restorative Justice Judicial Structure

Restorative justice is another method utilized to conduct student discipline. In regard to practice, Zehr (2002) identified the following three pillars of restorative justice theory: harms and needs, obligations, and engagement. Additionally, the National Institute of Justice (2007) presents principles to guide restorative justice work: addressing the affect of actions on human relationships, the role of victims and the community, restoring the community, the responsibility of the offender, and the development of individuals involved. All of these guiding ideals work to associate the restorative justice process with words like dignity, trust, community, and growth (Lipka, 2009b). According to Karp and Allena (2004), the process of restorative justice could benefit most if not all institutions because it is a system that helps students to understand all sides of their actions and to restore what they have taken from their community. Karp and Allena (2004) defined restorative justice as:

A collaborative decision-making process that includes victims, offenders, and others seeking to hold offenders accountable by having them (1) accept and acknowledge responsibility for their offenses, (2) to the best of their ability repair the harm they caused to victims and communities, and (3) work to reduce the risk of reoffense by building positive social ties to the community. (p. xv)

There are a number of fundamental concepts of restorative justice from the National Institute of Justice (2007) that are important to understand as part of its successful implementation. Offenders must see the impact their "crime" can have on people and

interpersonal relationships, and the obligations and liabilities they have for the welfare of the community, its members, and the social conditions. The victims and the community, along with the offender, are all key stakeholders in the restorative justice process, and should work as a unit to mutually agree on outcomes and to support the integration of the offender back into the community. Reintegration, versus removal from the situation, is a critical piece that allows the offender to right the wrongs that occurred and to make amends as part of the healing process. Karp (2004) felt that reintegration is a piece that is missing from many judicial affairs processes. Finally, the National Institute of Justice (2007) seeks fairness, not uniformity of outcomes, to uphold justice and to bring about personal change through the process. Restorative justice seeks to find a healthy developmental balance between the rigid nature of legalistic models and a lack of accountability that comes with liberal avoidance of behaviors (Karp & Allena, 2004). The developmental changes students experience with this method impact all involved, from the offender to the victim to the community in which the conduct issue occurred, because all parties are expected to participate actively in the process (Karp & Allena, 2004; National Institute of Justice, 2007).

Karp (2004) presented different methods by which the restorative justice structures can be implemented. The first method is to use a board, which resembles the judicial board one might see on campuses, but differs in its "emphasis on restorative dialogue and the creation of the reparative agreement" (p. 13) and its goal to "seek creative outcomes that strive to repair harm and reintegrate offenders and victims" (p. 29). The second method is mediation or "conciliatory interventions" by parties not directly involved in the issue (e.g., an administrator or hall director) who work with the victim and offender to reach a mutual understanding and solution to the problem (Warters, 2004). The third method is conferencing, which is like a

mediation but includes "'supporters' of the victim and the offender" (Karp, 2004, p. 12). These supporters can be parents, close family, and friends. Lake (2009) discusses how the University of Michigan at Ann Arbor, Clemson University and their Office of Community and Ethical Standards, and the University of Colorado at Boulder have implemented successful restorative justice programs that work to invest time, effort, and patience in students to produce "[educated] citizens and leaders capable of strengthening communities and inspiring commitment" (Oles, 2004, p. 267). This method certainly comes with its challenges, such as coming to a mutual agreement with all parties involved. Karp and Allena (2004) acknowledged that at times there is great difficulty reaching a consensus on what qualifies as harm to the community. When it comes to sanctions in the restorative justice process, apologies, various forms of retribution, and what Karp (2004) called "enlightened community service" (p. 11) are encouraged. Suspensions and expulsions are the end result in some cases, but the emphasis on reintegration into the campus community and repairing harm should be top priorities for this structure to be most effective (Braithwaite, 2002; Karp & Allena, 2004).

Is there a "Best Structure"?

Fitch and Murry (2001) conducted a study of student judicial systems in three designated categories of formal, informal, and mixed systems, and compared them on "five common outcome measures: (a) total cases adjudicated, (b) number of appeals, (c) sanctions modified due to an appeal, (d) number of repeat offenders, and (e) lawsuits filed against the institution as a direct result of disciplinary action" (p. 192). A formal judicial system is one that uses legalistic language and proceedings, incorporates attorneys, and may require board members to wear formal attire such as robes. An informal system uses procedures that are less ceremonial and

lawyers play a minimal role in representing students. A mixed system is a "hybrid" between the

formal and informal structures and incorporates characteristics of both systems. When it comes

to terminology, formal systems tend to use words like "'guilty,' 'beyond a reasonable doubt,'

'sentence,' and 'justices,'" while informal systems employ words like "'responsible' and 'not

responsible'" (p. 190). Mixed systems may use terminology from the formal system but not

require the formal court-like setting or participation from attorneys. As Fitch and Murry (2001)

compared the systems based on the five outcome measures, formal systems have "the lowest

number of cases adjudicated, the fewest number of appeals filed, the least number of sanctions

modified due to an appeal, and the smallest number of repeat offenders" (p. 198). Informal

systems "report the highest number of cases adjudicated per year, the highest incident of repeat

offenders per year, and the highest number of lawsuits filed in a particular year" (p. 198).

Finally, mixed systems had "the lowest mean value in only one category: number of lawsuits

filed per year as a result of disciplinary action. However, mixed systems exhibit the highest

number of appeals and appeals overturned per year" (p. 198).

　　　Despite the differences that exist between the formal, informal, and mixed systems on the

outcome measures, Fitch and Murry (2001) concluded that there were no statistically significant

differences between the three judicial systems. Ultimately, this means there is likely no "best

structure" or "one-size-fits-all" approach to judicial systems. Institutions need to utilize a

structure that responds to the needs of both students and the institution as a whole, and one that

balances rigid, legal aspects with student development. Mullane (1999) agreed with the findings

of Fitch and Murry (2001) in terms of avoiding a one-size-fits-all approach, and noted that

students profited from more personalized approaches and also perceived them to be more

educational when treated case-by-case. With judicial structures that are more individualized,

students tend to feel as though they are heard and have unique ideas, perspectives, and circumstances (Pavela, 1996).

While there may not truly be a "best structure," there is a great deal of literature that discusses the benefits of steering away from formal or legalistic models for judicial matters (e.g., Gehring, 2001; Lake, 2009; Lipka, 2009a; Stoner, 1998; Travelstead, 1987). As noted in the legalistic section of this report, Dannells (1997), Gehring (2001), and Pavela (1999) discussed how legalistic or formal models tend to create adversarial environments, foster confusion between criminal law and campus conduct, and hinder educational opportunities. Thus, the thought is that distancing from legalistic ways and focusing on student growth, understanding, and development will be more effective in addressing student conduct and in seeing changes in behavior. Fitch and Murry's (2001) study suggested otherwise, and concluded that finding a balance between the legalistic processes and language and student development is most effective. Despite the system that institutions choose to employ, most would agree that their method is intended to be educational in nature (Fitch & Murry, 2001). Moving forward, it is important for institutions to determine the more effective and impactful structure for their student population, to seek to incorporate developmental aspects, and to implement some form of feedback and evaluative pieces to continuously improve the structure. Gehring (2001) stated that the "ultimate goal would be for both sides to win: the students by enhancing their ethical development, and the institution by accomplishing its developmental mission" (p. 3), despite the judicial structure that is utilized.

Student Moral Development in Relation to Student Discipline

Colonial institutions built their judicial systems with fear as a motivating factor for change and in an effort to uphold the name of the institution, but disciplinarians must now seek

to empower and develop students and encourage self-discipline through their processes (Harris et al., 1982). The Association for Student Conduct Administration (1993) stated in its Ethical Principles and Standards of Conduct that the "primary purpose[s] for the enforcement of such standards is to maintain and strengthen the ethical climate, to promote the academic integrity of our institutions, [and to] seek to create and maintain a campus climate in which learning and personal growth and development take place" (pp. 1-2). Rogers (1990) took this idea even further and discussed moral development and the ability to discern right from wrong as important components and purposes of campus discipline. This moral development is seen to stem from an obligation of those responsible for the administration of student discipline to see that appropriate attention is given to the moral and ethical issues students face in the college environment (Evans, 1987). Roche (1994) found that many educators did not view the morals and personal conduct of students as their responsibility, but Baker (1992), McNeel (1994), and Nuss (1988) argued that institutions need to have moral education as a goal of their work, and judicial structures should work to foster the ethical and moral development and the integrity of students.

Theoretical Foundation

The foundational theories for student moral and ethical development (e.g., Gilligan, 1982; Kohlberg, 1964; Perry, 1981; Piaget, 1965) provide student affairs and judicial administrators with guidance, structure, and understanding. Boots (1987) discussed the need for judicial officers to understand such developmental theory in order to truly help students grow and develop from their involvement in the judicial process, and to understand the purpose of sanctions being not merely for punishment, but for teaching and learning.

Piaget (1965) presents a view of moral development based on his work with cognitive development.   He provided a theory of various stages where individuals develop from the mindset of a strict adherence to rules to autonomous reasoning. According to Piaget, children begin in a stage of adhering to rules and policies and being obedient to authority. In this stage of development, children tend to view outcomes as more important than intentions of actions, and have a characteristic "egocentrism" in which their own thoughts and perspectives dominate their moral reasoning. Moral development, which comes about as a result of interpersonal interactions, will take them to a place of autonomous moral reasoning, where they view rules and policies with mutual respect and cooperation in mind and seek solutions that work for all involved. In this stage they are able to incorporate the perspectives of others into their reasoning, and it becomes important for students to have opportunities to discover others' perspectives and to have self discovery, rather than being indoctrinated with norms. Piaget affirms that judicial structures can be a way for students to see the importance of collaboration versus just receiving strict punishment, and the critical development that can take place in that process.

Kohlberg (1964) utilized the ideas and cognitive developmental model of Piaget, and constructed three levels, broken into six well-defined stages, in his Theory of Moral Development. Kohlberg's first level, preconventional morality, with two stages of obedience and punishment and individualism and exchange, encompasses the egocentrism individuals experience (much like the first stage of Piaget), where the focus is solely on their own perspectives and actions are in accordance with what is "right," as defined by society. As individuals progress to the second level of conventional morality, with two stages of interpersonal relationships and maintaining social order, they seek to act in accordance with their social expectations and role, to follow authority, and to do their duty, and they begin to consider

the larger society in making moral decisions. Kohlberg's final level of postconventional

morality, with two stages of social contract and individual rights and universal principles, is

when individuals begin to take into account the values, opinions, and perspectives of others; to

seek cooperative standards; and to base decisions on some form of universal ethical principles.

In looking at moral development, Power, Higgins, and Kohlberg (1989) also emphasized the

need to go beyond individual reflection and to experience morality as a member of the

community.

Another foundational model for students' moral and ethical development is Perry's

(1981) model of Intellectual and Ethical Development. Perry presented nine different positions,

which fall into four basic stages, through which individuals develop. Perry's first basic stage is

dualism, where individuals view things as right and wrong and see a correct answer or solution

to problems that reside with authorities. The second stage is multiplicity, where individuals are

allowed to have their own opinions because conflicting answers exist. Individuals in this stage

value trusting oneself and one's answers and not relying on authority. In Perry's third state of

relativism, reasoning for different opinions is heard and valued within a certain context and some

ideas become more worthy than others. This stage is where one also begins to see the need to

commit to a solution. The final stage Perry presents is that of commitment, where an individual

integrates the opinions and views of others, partakes in personal reflection, and commits. In this

stage individuals develop an understanding of implications that come from commitments and the

on-going nature of commitment.

Finally, Gilligan (1982) offered a different perspective on moral development and

reasoning with her Ethic of Care, as she thought that Kohlberg's (1964) stages were based too

closely on the moral development of men. Gilligan presents a morality of care and connection to

others versus one of justice and separation in her stages of preconventional, conventional, and postconventional, and discusses the moral development of women driven by a sense of self rather than cognitive development. For Gilligan, the preconventional stage is about the individual's survival and selfish nature, whereas the conventional stage is where the woman shifts her view to others and is much more self-sacrificing. Finally, in the postconventional stage, the woman transitions to a principle of nonviolence that is genuine care to not hurt others or herself.

The theories that guide student moral and ethical development are important to keep in mind when structuring a judicial system. An understanding of moral and ethical development theory is critical for professionals to implement an intentional and impactful judicial structure, and to ultimately uphold institutions' developmental missions. Whether an institution chooses to prescribe to one theory or to integrated aspects from multiple theories, the goal is to respond to the developmental needs of the students whom it serves. As Dannells (1997) stated, "student discipline is and always has been an excellent opportunity for developmental efforts" (p. 79).

The Impact of Prior Student Moral Development

The research and publications surrounding judicial affairs and student discipline focus on both stages of student moral development prior to encountering student discipline as well as the resultant development that takes place post judicial affairs. Allen (1994) presents four student learning outcomes that administrators identified for their judicial processes: "(a) accepting responsibility for one's actions, (b) understanding the effects of one's actions on others, (c) making constructive changes in behavior, and (d) understanding the seriousness of one's behavior" (as cited in Howell, 2005, p. 376). To make these outcomes a reality, Allen noted that administrators suggested "(a) confronting the student with the consequences of his or her

behavior, and (b) having meaningful dialogue between the judicial officer or committee and the student" (as cited in Howell, 2005, p. 376). Are these outcomes really being met, and how does the developmental level of students impact the ability to make these outcomes a reality?

In applying foundational knowledge of developmental theory and examining prior moral development, Mullane (1999) and Cooper and Schwartz (2007) found that college students who are involved in disciplinary matters because they have violated the conduct code have lower levels of moral development and reasoning than typical college students used in the normative research samples. As a result, it is important for disciplinarians and judicial officers to provide opportunities for moral development throughout the disciplinary process. Cooper and Schwartz (1997) also concluded that variables such as age, gender, GPA, and Greek affiliation may have influenced the moral development of students and their likelihood of violating the conduct code, but these correlations were not statistically significant. Additionally, the moral development of a student plays a critical role in the discipline process, such that "students scoring lower in moral development are less likely to modify their behavior in constructive ways" (Mullane, 1999, p. 94). Boyce and Jensen (1978) also noted that people at higher stages of moral development tend to act with more consistency in their judgments. Thus, there is clearly a need for a moral development component in the judicial process if institutions wish to see not only long-term changes in behavior from those who go through the process, but also students who can critically reflect and self-evaluate (Cooper & Schwartz, 2007; Rest, Narvaez, Bebeau, & Thoma, 1999). Finally, Cooper and Schwartz (2007) found that according to Kohlberg's (1964) Theory of Moral Development, both students who did and students who did not have conduct code issues were similar in moral judgment in the areas of personal interest and maintaining social norms (preconventional and conventional levels). However, students who had conduct code issues

varied from students who did not have conduct code issues in their principle-based, postconventionl moral judgment. In essence, students who had disciplinary issues utilized principle-based reasoning less often than the normative group of students. This study gives judicial officers some idea of where students may be developmentally, and helps them begin to identify processes and techniques that can assist with students' moral and ethical development within the judicial structure.

The developmental and behavioral influence of a student's peer group should also be noted in the discipline process. Many administrators would agree that this peer influence may even have the greatest impact on student development (Pavela, 1996). Peer influence plays a role because "behavior can be far more effectively shaped by the desire to live up to the standards of a community of which one feels a part than by the attempted enforcement of rules" (Hoekema, 1994, p. 143), and can lead to a greater degree of compliance and cooperation in the process. This type of influence is certainly a driving force within the honor code system that many institutions employ. Additionally, it aligns with the idea that students tend to be similar in their moral development when it comes to Kohlberg's (1964) stage of maintaining social norms (Cooper & Schwartz, 2007). Cooper and Schwartz (2007) also noted that the level of moral judgment between class years was statistically significant (higher year in school typically meant further along in moral development), which aligns with studies surrounding moral judgment and years of formal education. This finding also reinforces potential positive effects that upperclassmen can have on underclassmen in terms of peer influence. Overall, it is critical to facilitate moral development within a judicial process that will hopefully continue in all aspects of a student's life. Rest (1993) concluded that if such an educational and development climate

exists within an institution's judicial affairs, the effect will go far beyond the classroom, the residence hall, and the university environment.

Student Perceptions of the Judicial Process and Resultant Behaviors

The ability to determine the impact and effectiveness of a judicial process can be challenging, but an argument can certainly be made for a student's perceptions of the process and their moral and ethical development being of great importance when judging the impact of a judicial process. Allen (2004) addressed student perceptions of the judicial process in his study, and identified the following as the most successful outcomes of their judicial experience: "(a) increased inclination to think through actions before acting, (b) accepting responsibility for actions, and (c) abiding by college policies in the future" (as cited in Howell, 2005, p. 376). Students reported that important practices for attaining these outcomes were "(a) responding to their conduct within a reasonable amount of time, and (b) an opportunity to sort out and discuss the situation" (as cited in Howell, 2005, p. 376). Students also indicated that they would seek to not repeat or to be more careful when it comes to the behavior that caused the conduct violation in the future (except when it came to alcohol violations) (Howell, 2005). Clearly, a judicial system that incorporates prompt responses and discussion surrounding the issue, can greatly impact students' future choices and actions, and can foster their moral and ethical development.

Mullane (1999) performed a study to determine if students perceived the disciplinary process to be fair and/or educational, and how their level of moral development was related to these perceptions. Mullane stated that "the higher the level of moral development, the more likely students perceived that the disciplinary process had educational value, independent of the students' perceptions of fairness" (p. 92). Additionally, "students who score below average on

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moral development may be less likely to perceive the disciplinary process as educational even when they perceive it to be fair" (p. 94). Students also perceived a greater benefit from judicial processes that were personalized and modified for each specific case, and saw them to be more educationally valuable (Mullane, 1999). As a result of the discipline experiences that students believed to be educational, they reported the importance of considering consequences, empathy, and familiarity with the judicial system (Howell, 2005). If students perceive the judicial process to be educational and fair, the hope is that they are more likely to achieve the learning outcomes previously mentioned by of thinking through actions, taking responsibility, and following policy (Allen, 2004, as cited in Howell, 2005, p. 376).

Despite efforts from disciplinarians or judicial officers, there is likely variation between students in terms of what report they learned from the process and the level of moral development that took place. Howell (2005) presents a number of different qualitative student perspectives in his study, and two such accounts are below to demonstrate the variance. Kyle discussed how he learned from this experience:

> I think speaking with [the judicial officer] and hearing like a university perspective on what happened, it makes me understand parts of that [conduct] code, why it's there . . . talking with her it helps me understand why it's there and why I should respect it, and why I should abide by it. (p. 382)

Jack perceived that his experience would have a better outcome if he "owned up" to his actions:

> Be honest, own up to everything you did, level with you, [if you] level they will let you go, but if you go against the system and try to claim that you have rights to fight your acquisition they will hit you harder. So that is what I say to people, you know, they are like 70% sure that you did this, they know, and they think that you did, so don't disagree

with them because it will only piss them off more, you know, just own up to whatever, and if you own up to it and you act like you are sorry, they will let you go easier, you know, which is basically what I did, you know. (p. 385)

Howell (2005) reported additional opinions of students' judicial experiences including a better understanding what it meant to live in a community, not needing to change because they were not "morally corrupt" (p. 383), not learning anything at all, and acting remorseful and telling the judicial officers what they want to hear to expedite the process.

As faculty, staff, and administrators seek to implement and to improve judicial structures, it is important to understand student perceptions and the impact of developmental levels on these perceptions. Howell (2005) and Mullane (1999) discussed how perceptions can significantly impact the moral development that takes place and the future behaviors and actions of students. Additionally, understanding and identifying the student learning outcomes can also benefit the judicial structure and processes, as well as the institutional environment as a whole. Judicial processes play a critical role in maintaining order and accountability, and the effectiveness of these processes is significantly impacted by the student feedback that is gathered and utilized to enhance the experience and the moral development that takes place.

Implications of the Literature

There are a number of implications for judicial affairs practice that follow from the research and literature, ranging from incorporating faculty into the discipline process to better understanding student development levels to the importance of critical reflection. First, Hoekema (1994) concluded that the responsibility of student conduct has too often fallen into the hands of student affairs administrators, and faculty have begun to feel a disconnect with the

enforcement of policy and the responsibility to student development when it comes to conduct.

Lake (2009) noted that there must be a cooperative effort across the university, and it is

important for faculty to be and to feel included and invested in the discipline process when

educating students about "standards, principles, and values" (p. 4), versus strict implementation

of rules. This cross-campus understanding can be seen through the implementation of a

collaborative judicial structure, or simply by educating faculty, staff, and administrators on the

rules and the importance behind them.

The education of students through discipline also ties into understanding the

developmental levels of students. Chassey (1999) noted that efforts to educate some repeat

offenders may be futile. Kohlberg's (1964) preconventional stage in which students

egocentrically perceive morality as actions that benefit only themselves, may mean the only

aspect a student offender is learning in this situation is not to get caught again. Thus,

disciplinarians are challenged to meet students where they are developmentally and to seek to

provide them with opportunities for moral growth. Additionally, Cooper and Schwartz (2007)

discussed how students also perceive discipline experiences quite differently, and some students,

those with lower moral judgment scores, may be concerned with consequences, while other

students, those with higher moral judgment scores, may reflect on and learn from a situation.

The developmental level of students can dictate how student affairs professionals best work

through a judicial process to make sure students are benefitting from the process, understanding

their actions, and hopefully changing behavior.

In terms of moral development, Rest et al. (1999) concluded that a key characteristic a

college should possess in promoting moral judgment seems to be a commitment to critical

reflection, especially seeing the variance between how different groups of students perceive the

appropriateness of different actions (Caboni et al., 2005). Thus, listening to students tell their side and explain their reasoning, and then facilitating reflection to achieve a firm understanding of the situation and actions, are crucial to the judicial process, to meeting students where they are, and to helping them develop most effectively. Howell (2005) shows this can be done through "developmental conversations," which create "an experiential learning opportunity that leads to growth in cognitive and moral development" (p. 389), a goal of student discipline.

The literature suggests that the discipline environment that an institution creates has a significant impact on student learning and development. Thus, it is important to be purposeful in creating this environment. Whether it is including faculty in the discipline process or being intentional with discussions to bring about student moral development, "judicial officers can feel confident that in most cases, some kind of learning does occur for students in the process and behaviors generally change" (Howell, 2005, p. 383). This leads to hope for the future of student discipline and an opportunity for more research to provide a better understanding of how to best conduct student discipline and provide development and long-term behavioral changes.

Gaps in the Literature

After reviewing the literature, there are certainly areas in which research and writing are lacking. These areas include: the outcomes and effectiveness of judicial affairs on student development, the connection to moral development theory, the impact of the college environment on moral behaviors, and the foundational and personal differences in the implementation of judicial structures across higher education by judicial officers.

Generally, the topic of judicial affairs and student discipline and its resultant impact on student moral development has not been studied or researched nearly enough, considering how crucial institutions feel it is and how long it has been in place. Cooper and Schwartz (2007)

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noted that while there is a great deal of literature about the policies and procedures, very few studies have given attention to the outcomes of student judicial sanctions and to educational aspects of judicial affairs. Many working in student affairs would agree that these two elements are crucial to moving forward in student discipline. There is also a dire need to research the effectiveness of judicial systems with respect to student moral development after the students have been through a judicial experience. Howell (2005) noted that various answers to questions of outcome, educational or otherwise, are offered by institutions and judicial officers, but in reality the actual outcomes of campus judicial systems remain largely unknown. Fitch and Murry (2001) echo this sentiment in discussing how judicial officers are unable to argue the effectiveness of adjudicating students and whether or not they are meeting departmental or institutional goals, as there is no evidence or critical data to support this knowledge. Mullane's (1999) study of student perceptions of fairness and educational value of a judicial system was the first of its kind, and it is recommended that more studies on this topic are completed as they help provide the evaluative piece that is necessary. The goal is that this research would give insight into how students experience the process and if the moral development piece is sufficiently present. The need for effective ways to determine and evaluate the impact and outcome of judicial affairs is evident.

Additionally, Carter and Jackson (1982) suggested looking at how students interpret "acceptable behavior," especially as one's upbringing can cause a great deal of variance in this area. This will better help judicial officers understand the perspective of students and tailor their interactions. Wayson (1982) expanded on this idea asserting the importance of gathering information on a student's greater understanding of discipline, making sure to not simply rely on student affairs professionals defining the concept, as many students are unable to relate to this or

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it may be difficult to understand (e.g., developmental terminology). A common theme has been that the perceptions and understanding of students play a critical role in how effective the judicial structure can truly be.

Specific research regarding the connection to theory (e.g., Gilligan, 1982; Kohlberg, 1964; Perry, 1981; Piaget, 1965) is also an area that needs additional research. Boots (1987) suggested that judicial affairs officers need to understand developmental theory in order to assist violators of campus rules in their growth and development so that they may reflect on their behavior and behave differently in the future. The cyclic issue that exists is that if judicial affairs officers, students affairs professionals, and faculty do not know the application or importance of developmental theory, and there is little to no research on theory's impact on work with judicial affairs and its affect on student development, it is difficult to stress and support the importance of theory and its necessity within student discipline and development today and in the future. Understanding theory would also play a role in stimulating research that seeks to "explore the complexities of moral development within the collegiate experience" (Mullane, 1999, p. 94), as related to theories of moral development.

Dannells (1997) recommended the operationalization and testing of development theories to really link theory to practice and to make theory come to life in the disciplinary context. An understanding of theory can apply in terms of investigating the differences in moral development and reasoning, as well as the differences in violations, between first year students and upperclassmen, and better understanding trends (Cooper & Schwartz, 2007). Further, longitudinal studies in which moral development is assessed freshman year and at graduation might be helpful in understanding the complex interaction between experiences, including the disciplinary process and adolescent development. Mullane (1999) clearly suggests that "different

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approaches to direct instruction in moral and ethical decision-making might be examined and their relationship to improved moral development assessed" (p. 94) over a greater period of time.

Additional studies that could benefit the topic of judicial affairs and student discipline would be those that examine the impact that the college experience has on moral behavior. Dannells (1997) suggested more research on student behavior and how it is affected by the predominant student culture, its various subcultures, and the faculty culture, and presents "culture audits" that utilize surveys and qualitative methods, especially ethnographic, to gather such information. This may mean studying students in "specific subgroups, such as residents of residence halls, participants in extracurricular organizations, and member of intercollegiate athletic teams" (Caboni et al., 2005, p. 541) to compare differences in conduct issues for the various groups, and examine why these differences exist. Additionally, there is a need for more extensive studies involving larger numbers of students to establish a more accurate and generalizable picture of factors that most contribute to student conduct (e.g., age, discipline, gender, school size, involvement) (Cooper & Schwartz, 2007; Terenzini, 1995). Ultimately, institutions are seeking "activities that would help students understand their responsibilities for living in an academic community" (Cooper & Schwartz, 2007, p. 606) and create an institutional environment that would have a positive impact on behavior.

Finally, Mullane (1999) placed a great deal of importance on investigating personal approaches to the disciplinary process. Studies that explore the very differences in judicial and conduct systems at various universities, including the personal differences implemented by those who facilitate them, could help to improve and move student discipline forward and to establish foundational goals and structural aspects that will be effective in years to come. These studies

would be most beneficial if they included reasoning behind the chosen structures and integration of student development theories.

Recommendations for Practice

Based on a review of the literature, there are a number of recommendations for judicial affairs practice including increasing the frequency of evaluation of judicial processes, clearly communicating the institutional viewpoint on judicial affairs, promoting uniformity and integrity in disciplinary actions, and utilizing the method of caring confrontation. Evaluation is the first recommendation for practice. The literature affirms that in order to be effective in judicial work, more emphasis on an evaluative piece is essential (Dannells, 1997; Fitch & Murry, 2001; Howell, 2005). Many in student and judicial affairs agree that the purposes of campus judicial systems are to promote, protect, value, and encourage an academic community and to promote citizenship and moral and ethical development of students involved in the judicial process. In order to attain these goals and ensure students' personal growth and development, regular evaluation of judicial processes is necessary (Association for Student Conduct Administration, 1993; Hoekema, 1994; Miller, 2003). Fitch and Murry (2001) and Howell (2005) discussed how the evaluative piece is essential to a judicial system's effectiveness and ability to achieve learning outcomes, as well as determining if departmental and institutional goals are met. Clearly, the need for an evaluative piece is evident in order to better understand students' experiences, to establish support for the chosen judicial structures, and to ensure continual improvement for the benefit of students' development and for the institutional environment.

When seeking to evaluate the effectives of judicial systems in terms of students' moral development, Cooper and Schwartz (2007) suggested the DIT2 (Defining Issues Test) as a useful method for practice. The original DIT was a paper and pencil assessment that was based around

the developmental stages of Kohlberg (1964), and the DIT2 is an effort on behalf of Rest et al. (1999) to offer a new approach to assessing moral development that utilizes a slightly different interpretation of development than Kohlberg's (1964) stages can offer. The DIT2 is based on the idea that individuals are able to function at a higher level of development but choose to utilize a lower level of functioning in many cases, and is based on the schema of personal interest, maintaining norms, and post-conventional (Rest et al., 1999). When applied in practice, the DIT2 can be employed as a tool to evaluate the effectiveness of judicial structures in terms of fostering student moral development. The DIT2 can lead to more of the critical data to support judicial affairs practice that is necessary.

As part of an effective evaluation of practice, judicial affairs officers must seek to ask intentional questions to truly examine and improve the structures in place. Emmanuel and Miser (1987) presented a list of several questions that can be posed to address whether or not the judicial structure in place is effective, developmental, fair, and suitable for the institution's needs. The questions are:

1. Does the judicial system function to protect the rights of students?

2. Does the judicial system help modify negative behaviors?

3. Does the judicial system teach students that actions have effects and they must accept responsibility for their actions?

4. Does the judicial system exist as an educational rather than a punitive focus?

5. Does the judicial system teach students about their responsibilities as members of a community?

6. Is the judicial system expedient and fair?

7. Does the judicial process help students clarify their values?

8. Does the judicial system help students gain perspective on the seriousness of their actions?

9. Do the judicial board members provide an opportunity for personal growth? (p. 87) These questions should be posed not only to faculty, staff, and administrators, but also to students who experience the campus judicial system and who can shed light on their perceptions of the process (Fitch & Murry, 2001). When utilized in practice, the answers to these questions can produce qualitative information about the judicial system in place, and can lead to the continual improvement of the system that will benefit the students and the institution.

Some researchers suggest that effective practice comes with clearly communicating the institutional viewpoint on judicial affairs. According to Wayson (1982), seeking to define what discipline means to an institution can truly guide the values which are instilled in the process, the structure that is utilized, and the individual interactions between judicial officers and students. It is also important to educate students on why conduct codes are in place and how to make moral and ethical decisions (Mullane, 1999; Pavela, 1985). According to Lake (2009), it is more important at times to combat behaviors by articulating core values than by strictly enforcing rules. This may aid students in curbing their behavior and helping them steer clear of the institutional judicial system in the future. In terms of effective communication, Gehring (2001) and Lake (2009) also saw that the move away from more complex and strict judicial procedures as an opportunity to be more straightforward and clear about processes that will be easier for students to understand and for institutions to articulate and to utilize.

Additionally, Carter and Jackson (1982) discussed the importance of making sure that there is uniformity and integrity in disciplinary action, that the sanctions imposed are suitable to the infraction that took place, and that policies and procedures are being interpreted properly by

those enforcing them. For example, if a student can violate a noise policy on their first offense in one setting on campus and be sanctioned to a reflective paper while another student violating the same policy for the first time elsewhere on campus must pay a fine, there may be inconsistencies in the system that need to be addressed, as well as a reflection on appropriate sanctions for the violation. Consistency with enforcement of policy does not mean employing a one-size-fits-all model or seeking to treat all students equally, but requires an institution to ensure that all students are treated fairly and that the integrity of the judicial system is not at stake.

Finally, Dannells (1997) recommended a way of thinking about judicial processes as "caring confrontation," where a supportive relationship is the foundation for critical examination of behavior, and the goal is to learn from the situation versus determining guilt and applying punishment. This would mean trimming complex procedures and abandoning strict standards to bring about a focus on gathering necessary information and on learning instead of a "beyond a reasonable doubt" mentality and punishments (Lake, 2009). This approach fits theoretically with Gilligan's (1982) Ethic of Care, and may be a beneficial approach to consider as institutions continue to choose and improve their judicial structures.

Summary

As Chickering stated, "Every college and university, public or private, church related or not, is in the business of shaping human lives" (as cited in Kitchner, 1985, p. 17). The judicial structures that are employed by different institutions are an attempt to shape the lives of students and their behaviors in a positive way. The importance of these structures is evident to higher education as whole. While judicial affairs and student discipline are a critical part of student life at colleges and universities, there is limited research and literature to help professionals understand the impact and the most beneficial methods to facilitate student moral development.

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As judicial affairs has varying purposes, techniques for facilitation, and an array of potential developmental impacts, it is clear that this topic is in need of more information and support for current and future practice. From moral development of students prior to interacting with the judicial system to the lessons learned and development that students experience, student affairs staff, administrators, and faculty need to view discipline as a crucial part of the journey that a student experiences in college. They also need to assess the needs of the students at their specific institution and to use evaluative measures to better understand how processes are perceived and to enhance the institutional environment. Institutions also need to implement an evaluative piece to allow them to serve the changing student populations year after year or they will suffer from complacency and ineffectiveness in the realm of development. As Fitch and Murry (2001) noted, there is no "best structure" for student discipline. Thus, institutions should seek to choose a structure that meets the needs of its students while fostering moral and ethical development, and one that can be effectively integrated into the campus culture. If the primary purposes, as stated by the Association for Student Conduct Administration (1993), are "for the enforcement of such standards to maintain and strengthen the ethical climate, to promote the academic integrity of our institutions, [and to] seek to create and maintain a campus climate in which learning and personal growth and development take place" (pp. 1-2), then there is a calling to meet these purposes and to discover the critical elements needed to facilitate this experience for students.

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